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May 29, 2007

DEPARTMENT OF ENERGY  
OFFICE OF HEARINGS AND APPEALS

*Hearing Officer's Decision*

Name of Case: Personnel Security Hearing

Date of Filing: January 19, 2007

Case Number: TSO-0462

This Decision considers the eligibility of XXXXXXXX XXXXXXXX (hereinafter referred to as "the individual") to hold an access authorization under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." As explained below, it is my decision that the individual's access authorization should not be restored at this time.

I. BACKGROUND

The individual is an employee of a Department of Energy (DOE) contractor, and has held a DOE access authorization continuously from 1993 until it was suspended in October 2006 in connection with the current proceeding. Based on information provided by the individual in a 2004 Questionnaire for Sensitive Positions and a subsequent investigation, the DOE conducted a Personnel Security Interview with the individual in June 2006 (the 2006 PSI). In addition, the individual was evaluated in August 2006 by a DOE-consultant psychiatrist (the DOE-consultant psychiatrist), who issued a report containing his conclusions and observations.

In October 2006, the Manager for Personnel Security of the DOE area office where the individual is employed (the Manager) issued a Notification Letter to the individual. In Enclosure 2 to this letter, which is entitled "Information Creating a Substantial Doubt Regarding Eligibility for Access Authorization", the Manager states that the individual's behavior has raised security concerns under Section 710.8(j) of the regulations governing eligibility for access to classified material. Specifically, with respect to

Criterion (j), the Operations Office finds that the DOE-consultant psychiatrist diagnosed the individual as meeting the criteria for "Alcohol Related Disorder Not Otherwise Specified" and also concluded that he is a user of alcohol habitually to excess. In addition, the attachment to the Notification Letter refers to a February 24, 1996 evaluation by another DOE-consultant psychiatrist who concluded in his report that the individual appeared to be a heavy drinker and that there was an increased risk that alcohol abuse might be a diagnosable problem in the future.

Enclosure 2 to the Notification Letter also refers to following alcohol related events or incidents involving the individual:

(1) In June and July 2006 his drinking was "heavy" and he admitted consuming about four martinis each evening. Each martini contained the alcohol of 2 and one half typical alcoholic drinks;

(2) In June or July 2005, the police found him in an intoxicated state at his home after responding to a report that he had been seen "snooping around" a nearby vacant property. Prior to the police visit, he also had taken Klonopin, a medication for insomnia, which should not be taken with alcohol;

(3) In May 2005, he experienced an alcoholic blackout after a night of heavy drinking and did not know why his kitchen and home were in such disarray. His wife, suspecting vandalism, called the police.

(4) In 2005, his psychiatrist and other medical professionals told him it would be better if he did not drink because sobriety would be better for his mental and physical health;

(5) In 2004, he took over-the-counter and prescription sleeping medications and antidepressants. Despite instructions to the contrary, he combined alcohol with these medications;

(6) From 1991 to 2006, he drank two to four cocktails on a daily basis, and intends to continue this pattern of usage;

(7) From 1988 to 1991, he consumed two to three drinks six times a week. He estimated that he became

intoxicated 500 times over the past 16 years or about once every couple of weeks;

(8) Both his mother and former wife expressed concern about his use of alcohol; and

(9) His chronic insomnia and persistent anxiety disorder are likely exacerbated, caused, or induced by his heavy drinking.

Enclosure 2 to October 2006 Notification Letter.

The individual requested a hearing (hereinafter "the Hearing") to respond to the concerns raised in the Notification Letter. In his initial written response to those concerns, the individual asserted that he now accepts the fact that he has a problem with alcohol, that he has been abstinent from alcohol since October 2006, that he is actively involved in rehabilitation activities, and that he is committed to future sobriety. In his written response, he stated that he entered into a twelve month recovery agreement with his Employee Assistance Program (EAP). He stated that subject to this agreement, he completed a six week, intensive, out patient substance abuse program in January 2007, and that he now is attending one Self Management and Recovery Training (SMART) meeting and two Alcoholic's Anonymous (AA) meetings each week. See March 1, 2007 e-mail from the individual to the Hearing Officer and the DOE Counsel. On March 30, 2007, in the individual submitted a copy of his EAP mandatory recovery agreement, a certificate of completion of his outpatient program, and attendance records for his AA and SMART meetings.

The "Hearing" in this matter was convened in April 2007. At the Hearing, the testimony focused on the individual's efforts to mitigate the concerns raised by the DOE-consultant psychiatrist's diagnosis of "Alcohol Related Disorder Not Otherwise Specified" through abstinence from alcohol and recovery activities.

## II. *REGULATORY STANDARD*

In order to frame my analysis, I believe that it will be useful to discuss briefly the respective requirements imposed by 10 C.F.R. Part 710 upon the individual and the Hearing Officer. As discussed below, Part 710 clearly places upon the individual the responsibility to bring forth persuasive evidence concerning his eligibility for access authorization, and requires the Hearing Officer to base all findings relevant to this eligibility upon a

convincing level of evidence. 10 C.F.R. §§ 710.21(b)(6) and 710.27(b),(c) and (d).

*A. The Individual's Burden of Proof*

It is important to bear in mind that a DOE administrative review proceeding under this Part is not a criminal matter, where the government would have the burden of proving the defendant guilty beyond a reasonable doubt. The standard in this proceeding places the burden of proof on the individual. It is designed to protect national security interests. The hearing is "for the purpose of affording the individual an opportunity of supporting his eligibility for access authorization." 10 C.F.R. § 710.21(b)(6). The individual must come forward at the hearing with evidence to convince the DOE that restoring his access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). *Personnel Security Review (Case No. VSA-0087)*, 26 DOE ¶ 83,001 (1996); *Personnel Security Hearing (Case No. VSO-0061)*, 25 DOE ¶ 82,791 (1996), *aff'd*, *Personnel Security Review (VSA-0061)*, 25 DOE ¶ 83,015 (1996). The individual therefore is afforded a full opportunity to present evidence supporting his eligibility for an access authorization. The regulations at Part 710 are drafted so as to permit the introduction of a very broad range of evidence at personnel security hearings. Even appropriate hearsay evidence may be admitted. 10 C.F.R. § 710.26(h). Thus, by regulation and through our own case law, an individual is afforded the utmost latitude in the presentation of evidence which could mitigate security concerns.

Nevertheless, the evidentiary burden for the individual is not an easy one to sustain. The regulatory standard implies that there is a presumption against granting or restoring a security clearance. See *Department of Navy v. Egan*, 484 U.S. 518, 531 (1988) ("clearly consistent with the national interest" standard for the granting of security clearances indicates "that security determinations should err, if they must, on the side of denials"); *Dorfmont v. Brown*, 913 F.2d 1399, 1403 (9th Cir. 1990), *cert. denied*, 499 U.S. 905 (1991) (strong presumption against the issuance of a security clearance). Consequently, it is necessary and appropriate to place the burden of persuasion on the individual in cases involving national security issues. In addition to his own testimony, we generally expect the individual in these cases to bring forward witness testimony and/or other evidence which, taken together, is sufficient to persuade the Hearing Officer that restoring access authorization is clearly consistent with the national interest. *Personnel Security Hearing (Case No. VSO-0002)*, 24 DOE ¶ 82,752

(1995); *Personnel Security Hearing (Case No. VSO-0038)*, 25 DOE ¶ 82,769 (1995) (individual failed to meet his burden of coming forward with evidence to show that he was rehabilitated and reformed from alcohol dependence).

#### *B. Basis for the Hearing Officer's Decision*

In personnel security cases under Part 710, it is my role as the Hearing Officer to issue a decision as to whether granting an access authorization would not endanger the common defense and security and would be clearly consistent with the national interest. 10 C.F.R. § 710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest." 10 C.F.R. § 710.7(a). I must examine the evidence in light of these requirements, and assess the credibility and demeanor of the witnesses who gave testimony at the hearing.

#### *III. HEARING TESTIMONY*

At the Hearing, testimony was received from six persons. The DOE presented the testimony of the DOE-consultant psychiatrist. 1/ The individual, who was not represented by counsel, testified and presented the testimony of the EAP staff psychologist, a colleague from his AA group, his group facilitator from SMART, and his current work supervisor. 2/

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1/ As indicated by the testimony of the DOE-consultant psychiatrist (TR at 17) and by his curriculum vitae (DOE Hearing Exhibit 10), he clearly qualifies as an expert witness in the area of addiction psychiatry.

2/ The individual's EAP psychologist testified that he is a licensed psychologist with more than twenty years of experience in the area of clinical assessment, psychological testing, and psychological assessment of alcohol and substance abuse. TR 45. I find that he qualifies as expert witness in this area.

A. *The DOE-Consultant Psychiatrist*

The DOE-consultant psychiatrist testified that he evaluated the individual in August 2006. The DOE-consultant psychiatrist testified that the individual described an alcoholic blackout, improperly combining alcohol with prescription drugs, and consuming large quantities of alcohol on a daily basis. TR at 19-27. He also observed from an August 2006 blood test on the individual that the individual's abnormally elevated liver enzymes and abnormally large red blood cells indicated the toxic effects of too much alcohol. TR at 31. He concluded that the individual met the *DSM-IV* TR criteria for "Alcohol Related Disorder Not Otherwise Specified," and that he is a user of alcohol habitually to excess.

Usually, the only times I make . . . refer that "user of alcohol habitually to excess" is if I do not diagnose the person as suffering from alcohol abuse or alcohol dependence, but still feel there's a problem, and then we'll bring in the more vague kind of lay term of user of alcohol habitually to excess. . . . It was pretty clear, because he was drinking above legal intoxication just about daily.

TR at 35-36.

The DOE-consultant psychiatrist stated in his report that the individual could demonstrate rehabilitation and reformation from his alcohol problem by remaining sober for a full year, coupled with outpatient treatment of moderate intensity. DOE Hearing Exhibit 10. At the Hearing, he explained that a year of sobriety was important because only ten percent of recovering alcoholics are able to remain sober for a full year.

. . . the highest drop-off of people trying to recover from alcohol and failing to do so occurs in that first year. Once you can make it through the first year, you're now in the 90<sup>th</sup> percentile, and there's only ten left [out of every 100 people who begin a sobriety program]. So another reason I like that one-year time frame is, to me, in terms of quantifying, it means this person has shown they're in the top ten percentile of recovering alcoholics, and their prognosis is good in terms of risk of future relapse.

TR at 58. He stated that he would measure this year of sobriety beginning on the date in October 2006 when the individual testified that he stopped consuming alcohol. TR at 60-61.

Following the testimony of the other witnesses, the DOE-consultant psychiatrist concluded that the individual apparently is participating fully in the treatment program that he has chosen, and that he is doing well in it. TR at 149.

I think he's in a very good stage of early recovery - early being five, six months. . . . Like I say, the most important date for me would be the sobriety date. . . . So I think I would still recommend a year of treatment.

TR at 149-150.

I would recommend basically, as I said in my report, that he would need to complete a one-year program, and he's on track, halfway through, basically, it looks like.

The DOE-consultant psychiatrist stated that after one year of sobriety and recovery activities, he could then vouch for the individual being rehabilitated and reformed from his alcohol problem. He stated that the individual's current risk of relapse was at a medium level, or possibly around a one in three chance. TR at 158. Finally, he noted that many of the alcohol related concerns in the Notification Letter were self reported by the individual, and that he believed that the individual also was honest in his testimony about his ongoing sobriety and recovery activities. TR at 163.

#### *B. The Individual's EAP Psychologist*

The EAP psychologist testified that the individual came to him in November 2006 following the suspension of his access authorization and asked to be placed on a recovery program. TR at 42. The EAP psychologist stated that he placed the individual on a standard mandatory recovery agreement for alcohol and substance abuse. He stated that pursuant to this agreement, the individual successfully completed an intensive outpatient program, and is now attending AA meetings two to three times per week and meeting with the EAP psychologist on a monthly basis. He stated that the individual also attends SMART recovery meetings, which are not required under his mandatory recovery agreement. TR at 43-44.

The EAP psychologist stated that at the time the individual entered the EAP recovery program, he diagnosed the individual as having an alcohol-related disorder, in remission. TR at 46. He stated that the individual should never resume drinking alcohol. TR at 49. He stated that the individual acknowledged at that time that he had an alcohol problem. TR at 47.

Basically, he recognized that it was not good for his health, and he was going down a very unhappy path with his alcohol use, and so that was one thing. Certainly, I think another thing is he's motivated for success in his career, and he knows that alcohol and drinking and substance abuse behaviors are not very compatible frequently with career advancement. So I think he's well aware of that, as well. . . . I would say that he has a good sort of internal motivation for maintaining sobriety.

TR at 48.

The EAP psychologist testified that he believes that the individual is very committed to his recovery, is a very compliant and active participant in his rehabilitation activities, and is maintaining his sobriety. TR at 44. He stated that he would place the individual in the top ten percent of his current caseload of individuals with recovery agreements in terms of his motivation. TR at 50. He stated that a year of treatment and sobriety is a very important benchmark to establish recovery. TR at 49. He stated that if the individual can successfully complete his one year recovery program, he would consider him to be adequately rehabilitated. TR at 55. He stated that with six months of sobriety, the individual's current risk of relapse is definitely under fifty percent. TR at 56.

#### *C. The Individual's AA Group Colleague*

The individual's AA group colleague testified that has been involved in AA since 1978, that he helps to chair the AA meeting that the individual attends. TR at 91 and 88. He acknowledged signing the individual's attendance record on December 15, 2006, shortly after the individual began attending the AA group. TR at 88. He testified that the individual attends the AA group two or three times a week. TR at 83. The AA colleague stated that initially the individual was rather quiet and reserved at the meetings, but that he's become "more alive, involved in recovery; and now he's got humor, he's lively, and it's definitely a change for the better." TR at 85. He stated that he was not certain whether the individual had an AA sponsor, but that the individual has his telephone number as a contact. TR at 84, 86. The AA colleague stated that he and the individual had not discussed the individual's progress in AA, but that the individual is involved in the meetings and has a very inquiring mind. TR at 86.



*D. The Individual's SMART group facilitator*

The individual's SMART facilitator testified that SMART stands for Self-Management and Recovery Training, and is a program to empower people to maintain sobriety, and to develop skills and tools that help them become independent from their addiction. TR at 132-133. He stated that the SMART program is headquartered in Ohio and that he brought the program in the individual's state and city about three years ago. TR at 138-139. He testified that the individual entered the program four or five months ago and currently attends a regular SMART meeting and a social meeting each week. TR at 130, 136. The SMART facilitator stated that the individual is very involved in group discussions and in suggesting issues for discussion prior to meetings. TR at 137. He stated the individual has his telephone number, and that they have discussed the individual's personal issues. TR at 137-138. He stated that based on their conversations and on his observation of the individual, he believes that the individual has not consumed alcohol since October 2006. TR at 141-142.

*E. The Individual's Work Supervisor*

The individual's work supervisor testified that he has known the individual since 1994 and been his supervisor since 1999. TR at 70-71. He stated that when the individual security clearance was suspended in August 2006, he counseled the individual to make a serious effort to address the DOE's concerns. TR at 73. He stated that the individual initially resisted accepting responsibility, but his attitude had changed when they next discussed the issue in December 2006. TR at 77-78.

The work supervisor stated that he never observed the individual smelling of alcohol or visibly intoxicated in the workplace. TR at 75. However, he stated that since he began his rehabilitation program, he has noticed a positive change in the individual's ability to cooperate during group discussions. TR at 78. He stated that he had no reason to believe that the individual has not maintained his sobriety since October 2006. TR at 81-82.

*F. The Individual*

In his opening statement, the individual stated that he acknowledges that he has been an alcohol abuser and that he has committed himself to total abstinence from alcohol and to a program of rehabilitation that included an intensive outpatient program and ongoing attendance at AA meetings and SMART meetings. TR at 10-15.

The individual stated that he stopped drinking in October 2006 after receiving medical advice that abstaining from alcohol could improve his chronic insomnia. TR at 104. 3/ The individual noticed some improvement in his sleep pattern, so he continued abstaining from alcohol until he received the Notification Letter indicating that he had been diagnosed with an alcohol problem. At that time, he immediately contacted his employer's EAP Program, entered into the EAP mandatory recovery program, and began an intensive outpatient treatment program. TR at 106-109. He testified that he began attending AA meetings two or three times a week in early December 2006. TR at 112-113. He also attends one SMART meeting each week. TR at 113. He stated that he finds his attendance at AA meetings beneficial to maintaining his sobriety but that he is not actively working through AA's twelve step program. He stated that the SMART meetings do not have steps and he prefers the SMART approach of recovery training aimed at identifying triggers and dealing with cravings. TR at 114-117.

He stated that he plans to continue attending AA meetings and SMART meetings, but that he may cut out one of the AA meetings to have time to see a therapist. TR at 118. He stated that he is a divorced parent with part-time custody of a child who is not yet old enough to be left alone at home. TR at 144.

The individual testified that under his EAP mandatory recovery program, he is subject to random monthly screenings for drugs and alcohol, and that all of these tests have been negative. TR at 118-120. He submitted the test results for December 2006 through March 2007. Individual's Hearing Exhibit 4.

The individual testified that he had not yet shared his commitment to sobriety with his former wife or his parents, and he acknowledged the need to deal with this issue. TR at 165. He also stated that in the next six months, he hopes to develop more social activities "where there would be people who would see me in the evening and say 'that guy wasn't drunk'." TR at 165.

The individual stated that he plans to complete his one-year recovery program with his EAP. TR at 145. He also stated that he considers his alcohol problem a chronic condition and that he plans

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3/ Following the Hearing, the individual checked his records and reported that his medical appointment concerning his sleep problem was on October 25, 2006. He stated that this is his sobriety date. See April 18, 2007 e-mail from the individual to the Hearing Officer.

to continue AA or SMART meetings and therapy after his first year of rehabilitation. TR at 121-122. He also testified that he does not plan to resume drinking because he believes that it will progress to a problematic condition. TR at 123-124.

#### IV. ANALYSIS

In his testimony at the Hearing, the individual asserted that he has made the necessary changes in his life to regain his former clearance status. He presented evidence indicating that he now acknowledges his problem with alcohol, that he has maintained sobriety since October 25, 2006, and that he is successfully complying with the conditions of his one-year recovery plan with his EAP. This plan involved his successful completion of a six week, intensive outpatient program, his weekly attendance at AA meetings and SMART meetings, monthly consultations with the EAP psychologist, and subjecting himself to random monthly tests for drugs and alcohol. He also testified that he is committed to abstaining from alcohol in the future. For the reasons stated below, I conclude that the individual's arguments and supporting evidence concerning his rehabilitation from his diagnosis of "Alcohol Related Disorder Not Otherwise Specified" do not resolve the DOE's security concerns as of the date of the Hearing.

The testimony at the Hearing indicated that the individual has been abstinent from alcohol since October 25, 2006 and has been engaged in a recovery program since November 22, 2006. However, the individual's corroboration of his abstinence from alcohol relied solely upon the testimony of witnesses who knew the individual in the workplace or in the context of his recovery efforts. As a general matter, individuals in Part 710 proceedings are expected to provide corroboration of their abstinence from the use of alcohol or illegal drugs with testimony from close friends or family members who can report on the individual's behavior outside of the workplace. At the March 29, 2007 conference call in this proceeding, I stated that the individual should add to his witness list close friends or relatives who could testify about his sobriety. At the Hearing, the individual acknowledged that he had not produced the corroborating witnesses that I had requested. He explained that he had not yet shared his commitment to sobriety with his former wife and parents. He also stated that he has not yet developed new friendships based on his sobriety, and that he hopes to do so in the next six months. While these explanations are plausible, the fact remains that the individual has presented no testimony to corroborate that he is abstaining from alcohol at night and on weekends.

Accordingly, my conclusion that the individual has maintained his sobriety since October 25, 2006 is based on the individual's successful participation in his recovery activities, his random workplace drug testing, and the opinions expressed by his SMART facilitator, his EAP psychologist, and his AA colleague. I also rely on the statement of his work supervisor that the individual has developed a more cooperative approach in the workplace in recent months, and the opinion of the DOE-consultant psychiatrist that he believes that the individual has been honest in reporting his alcohol use.

In the administrative review process, it is the Hearing Officer who has the responsibility for forming an opinion as to whether an individual with alcohol problems has exhibited rehabilitation or reformation. See 10 C.F.R. § 710.27. The DOE does not have a set policy on what constitutes rehabilitation and reformation from alcohol diagnoses, but instead makes a case-by-case determination based on the available evidence. Hearing Officers properly give a great deal of deference to the expert opinions of psychiatrists and other mental health professionals regarding the likelihood of relapse. See, e.g., *Personnel Security Hearing (Case No. VSO-0027)*, 25 DOE ¶ 82,764 (1995) (finding of rehabilitation); *Personnel Security Hearing (Case No. VSO-0015)*, 25 DOE ¶ 82,760 (1995) (finding of no rehabilitation). At the Hearing, the DOE-consultant psychiatrist concluded that the individual was making good progress in his recovery from his alcohol related disorder but that he needed to continue his sobriety along with his current rehabilitation program for a full year until October 25, 2007, before he could demonstrate rehabilitation and reformation from his alcohol related disorder. The individual's EAP psychologist stated that he would consider the individual rehabilitated upon the completion of his one-year recovery agreement on November 22, 2007.

I agree with the conclusions of DOE-consultant psychiatrist. My positive assessment of the individual's demeanor and of the evidence presented at the Hearing convince me that the individual has maintained his sobriety since October 25, 2006, that he has committed himself to sobriety, that he is actively participating in AA meetings and SMART meetings. These positive developments are all significant factors which indicate progress towards rehabilitation and reformation from an alcohol related disorder. However, I agree with the DOE-consultant psychiatrist that the individual must maintain his sobriety, along with his rehabilitation program, until October 25, 2007, before he can be considered reformed and rehabilitated. The DOE-consultant psychiatrist believes that a full year of abstinence from alcohol is necessary for the individual to demonstrate that he is at low

risk for relapsing into problem drinking. I find the concerns raised by the DOE-consultant psychiatrist to be reasonable and persuasive, and I find that rehabilitation or reformation has not yet occurred.

I do not believe that there is a significant disagreement between the DOE-consultant psychiatrist and the EAP psychologist on a date for rehabilitation in this case. Although the EAP psychologist naturally is focused on the individual's completion of his one-year EAP recovery agreement in November 2007, he agrees that the individual's successful completion of almost five months of his recovery program already has significantly lowered his risk of relapse. I agree with the DOE-consultant psychiatrist that the individual's sobriety date of October 25, 2006 is the more significant date, and should be the beginning date for measuring the full year of abstinence from alcohol that is necessary for him to demonstrate rehabilitation and reformation from his alcohol related disorder.

Accordingly, I conclude that it would not be appropriate to restore the individual's access authorization at this time.

#### V. CONCLUSION

For the reasons set forth above, I find that the individual suffers from an alcohol related disorder subject to Criterion (j). Further, I find that this derogatory information under Criterion (j) has not been mitigated by sufficient evidence of rehabilitation and reformation at this time. Accordingly, after considering all of the relevant information, favorable or unfavorable, in a comprehensive and common-sense manner, I conclude that the individual has not demonstrated that restoring his access authorization would not endanger the common defense and would be clearly consistent with the national interest. It therefore is my conclusion that the individual's access authorization should not be restored. The individual or the DOE may seek review of this Decision by an Appeal Panel under the regulation set forth at 10 C.F.R. § 710.28.

Kent S. Woods  
Hearing Officer  
Office of Hearings and Appeals

Date: May 29, 2007